

Hon. Judge Benjamin H. Settle

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CLYDE RAY SPENCER, et al.,

Plaintiffs,

vs.

SHIRLEY SPENCER, et al.,

Defendants.

No. 3:11-CV-05424-BHS

DEFENDANT SHIRLEY SPENCER'S
REPLY TO PLAINTIFF'S RESPONSE TO
MOTION TO DISMISS COMPLAINT FOR
FAILURE TO STATE A CLAIM, AND,
CERTIFICATE OF SERVICE

CONSIDERATION: September 16, 2011

REPLY OF DEFENDANT SHIRLEY SPENCER TO PLAINTIFF'S RESPONSE TO
MOTION TO DISMISS COMPLAINT FOR FAILURE TO STATE A CLAIM

In the Response, the Plaintiff argues that sufficient factual allegations are contained in the Complaint to establish a cognizable Claim for Relief against this Defendant because there are allegations referring to "all defendants", which would include her. (Response, p. 2, Doc. 18) However Circuit Courts have rejected this reasoning.

1 In Kansas Penn Gaming, LLC v. Collins, 10-3002 (FED10, 2011), the Court set
2 forth the parameters for a sufficient Complaint as established by the Bell Atlantic
3 Corporation v. Twombly, 550 U.S. 544, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007)
4 and Ashcroft v. Iqbal, ___ U.S. ___, 129 S.Ct. 1937 (2009) cases, as follows:
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6 "The nature and specificity of the allegations required to state a plausible
7 claim will vary based on context. Smith v. United States, 561 F.3d 1090,
8 1104 (10th Cir. 2009) (addressing an Eighth Amendment conspiracy);
9 Gee v. Pacheco, 627 F.3d 1178, 1185 (10th Cir. 2010) (resolving a
10 prisoner complaint). "The Twombly standard may have greater bite" in the
11 context of a § 1983 claim against individual government actors, because
12 "they typically include complex claims against multiple defendants."
13 Robbins, 519 F.3d at 1249. "[I]t is particularly important in such
circumstances that the complaint make clear exactly who is alleged to
have done what to whom, to provide each individual with fair notice as to
the basis of the claims against him or her, as distinguished from collective
allegations against the state." Id. at 1250."

14 This reasoning is applicable to the case at bar. There are several defendants
15 named in the complaint and several unnamed defendants. What specifically Shirley
16 Spencer did to unlawfully cause damage to the Plaintiffs is not spelled out, or even
17 referred to in these allegations.
18

19 Finally, the Plaintiff requests leave to amend the complaint. This Defendant
20 objects to this request because the Plaintiff has not set forth any factual matter that
21 would be alleged in such an amendment in a manner such that it would state a valid
22 claim for relief.
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24 Dated: September 15, 2011.

25 Respectfully submitted:
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1 /s/ William Dunn

2 Attorney for Defendant Shirley Spencer
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27 Reply to Response to Motion to Dismiss, page 3
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CERTIFICATE OF SERVICE
ELECTRONICALLY

I hereby certify that on September 14, 2011, I electronically filed the attached pleading with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all of the parties' attorneys which parties are represented by counsel, as follows: Daniel T. Davies, Kathleen Zellner and E. Bronson Potter. No parties are not so represented.

Dated: September 14, 2011

/s/ William Dunn

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